

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

AN INQUIRY INTO THE STATE) CASE NO.
UNIVERSAL SERVICE FUND) 2016-00059

ORDER

The Commission, on its own motion, hereby initiates this administrative proceeding to investigate the current and future funding, distribution, and administration of the Kentucky Universal Service Fund ("KUSF"). The need for this investigation arises from the projected depletion of the KUSF by the end of April 2016, when it will no longer be able to meet its monthly obligation. One of the first issues to be reviewed will be the necessity for increasing the current funding mechanism or reducing the support paid to carriers, on a temporary basis, to maintain KUSF solvency during the pendency of this investigation. Other issues to be reviewed include: the need for continuing the KUSF; future funding levels of KUSF; the possibility of reducing the amount of KUSF support on a permanent basis; past and projected distributions from the KUSF; and, determining the future practices for requesting and receiving support from the KUSF. Each local exchange carrier ("LEC"), commercial mobile radio service provider ("CMRS provider" or "wireless carrier"), and every eligible telecommunications carrier ("ETC") in Kentucky will be made a party to this proceeding, as well as the Attorney General's Office.

The Commission established the KUSF in Administrative Case No. 360, along with the funding and distribution mechanisms needed to administer the KUSF.¹ The KUSF was created to provide state support for the federal Lifeline² program in Kentucky. In initiating the case, the Commission stated that:

The Telecommunications Act of 1996, Pub. L. No.104-104, 110 Stat. 56 (1996) (the "Act" or the "1996 Act"), specifically provides for states to adopt mechanisms that preserve and advance universal service. Such mechanisms must be specific, predictable, and sufficient" and must not "burden the federal universal support mechanisms." The decisions reached herein comply with those principles as well as those enumerated elsewhere in the 1996 Act. The first principle of the Universal Service Fund ("USF") created herein is to ensure that quality service is provided at just, reasonable, and affordable rates. Ensuring that quality service is available to all Kentuckians at reasonable rates has been a primary goal of this Commission since its inception.³

The KUSF provides \$3.50 per month per Lifeline customer. At the time of implementation of the KUSF, the federal USF provided additional support to an ETC of 50 percent of the state support, up to \$1.75 of matching support. At that time, ETCs in Kentucky accepting KUSF support received up to an additional \$1.75 per month per Lifeline customer from the federal USF. In 2012, the Federal Communication Commission ("FCC") subsequently removed the matching support and established the

¹ Administrative Case No. 360, *An Inquiry Into Universal Service Funding Issues* (Ky. PSC May 22, 1998).

² See, generally, 47 C.F.R. § 54.400 *et seq.*

³ Administrative Case No. 360, *An Inquiry Into Universal Service Funding Issues* (Ky. PSC May 22, 1998), Order at 1.

federal Lifeline support at \$9.25 per month.⁴ Thus, ETCs receiving both federal and state support may receive up to \$12.75 per month per Lifeline customer.

The KUSF is funded by a per-access line surcharge collected from all wireless carriers and LECs. The Commission initially established the surcharge at \$.05.⁵ The Commission, citing changes to the projected cost of the KUSF, subsequently lowered the surcharge to \$.03 per access line on November 15, 1999.⁶ Citing changes to the projected cost of the KUSF, the Commission raised the surcharge to \$.05 on November 17, 2000,⁷ and increased it to \$.08 on June 3, 2004.⁸ The surcharge has remained at \$.08 since June 3, 2004.

On February 6, 2012, the FCC issued its Lifeline Reform Order, comprehensively reforming the low-income programs of the federal USF. As discussed *supra*, the Lifeline Reform Order adjusted the federal USF support to \$9.25 and eliminated the matching of state USF support. The Lifeline Reform Order also: amended the eligibility requirements for the Lifeline program; changed the annual audit and recertification procedures for reporting the number of Lifeline customers to the Universal Service Administration Company ("USAC"); and clarified the Lifeline application process. On May 1, 2012, the Commission issued an Order that, *inter alia*: 1) adopted the FCC's annual audit and recertification process; 2) adopted the eligibility requirement of

⁴ *Lifeline and Link-Up Reform and Modernization et al.*, Report and Order and Further Notice of Proposed Rulemaking, WC Dkt. Nos. 11-42 et al., cc Dkt. No. 96-45, DCC 12-11 (rel. Feb. 6, 2012). ("Lifeline Reform Order") at ¶ 58.

⁵ Administrative Case No. 360, *An Inquiry Into Universal Service Funding Issues* (Ky. PSC Nov. 16, 1998).

⁶ *Id.* (Ky. PSC Nov. 15, 1999).

⁷ *Id.* (Ky. PSC Nov. 17, 2000).

⁸ *Id.* (Ky. PSC June 3, 2004).

household income at or below 135 percent of the of the federal poverty level; 3) adopted the application process in the Lifeline Reform Order; and 4) required ETCs to follow the FCC's rules and direction for annual audits.⁹

The Commission designated the Kentucky Finance and Administration Cabinet ("Finance Cabinet") to administer the KUSF.¹⁰ All wireless carriers and LECs must, on a monthly basis, submit to the Finance Cabinet a form, with a copy to the Commission, showing the amount due from the carrier to the KUSF-calculated by multiplying the total number of access line by the surcharge amount.¹¹ The carriers remit their payment to the KUSF with the form. The form also contains a line for the number of a carrier's access lines receiving Lifeline support and the requested monthly payment from the KUSF.

The KUSF has declined since mid-2012, and the solvency of the fund is now in jeopardy. The KUSF had a peak monthly surplus of almost \$11 million in May 2012. In October 2015, that surplus had dwindled to just over \$400,000. Prior to April 2012, the average monthly distribution from the KUSF was approximately \$215,000. The average monthly distribution in 2012 after April was approximately \$567,400. In subsequent years, the average monthly distribution has been approximately: \$612,500 in 2013; \$592,400 in 2014; and \$557,500 in 2015. The average monthly payments into the KUSF for 2015 averaged approximately \$439,400. Therefore, for 2015, the KUSF experienced an average monthly shortfall of approximately \$118,000.

⁹ Case No. 2012-00146, *Lifeline Reform* (Ky. PSC May 1, 2012.)

¹⁰ Administrative Case No. 360, *An Inquiry Into Universal Service Funding Issues* (Ky. PSC May 22, 1998), Order at 38.

¹¹ The form may be viewed at: <http://psc.ky.gov/agencies/psc/forms/usf2008.pdf> (Last visited Jan. 21, 2016).

Since its inception, 52 carriers have, at some point, received disbursements from the KUSF.¹² As discussed earlier, the KUSF had its highest surplus in May 2012, and the surplus began to decrease in the following months. Coincidentally, beginning in April 2012 through the remainder of 2012, eight carriers made their first draw from the KUSF.¹³ Since the beginning of 2013, eight additional carriers have made their first draw from the KUSF.¹⁴ The majority of the new recipients of the KUSF after May 2012 were Mobile Virtual Network Operators (“MVNO”), but whether or not this if of any significance is not yet known.

The Commission, during this investigation, must first address the pressing need for solvency of the KUSF. The Commission has calculated that to maintain the existing \$3.50 reimbursement rate, the current monthly per-line surcharge will need to be increased from \$.08 to \$.14 as soon as possible, or current support will need to be decreased from \$3.50 per line to approximately \$2.00 per line as soon as possible. The Commission will seek immediate comment on such action from the parties and the public. The Commission will then enter an interim Order setting forth its findings on the issue of temporarily increasing the KUSF per-line surcharge or reducing the per-line support during the pendency of this proceeding.

The procedural schedule for this proceeding is attached as an Appendix to this Order. That schedule includes dates for requesting intervention, filing testimony,

¹² Some of these carriers no longer draw from the KUSF, having either ceased doing business in the Commonwealth or having voluntarily relinquishing their ETC designation.

¹³ These carriers are: 1) Absolute Home Phones, Inc.; 2) Affordable Phone Service; 3) Budget PrePay, Inc. (the wireless entity for Budget PrePay); 4) dPi Teleconnect, LLC; 5) Easy Telephone Services Company; 6) i-wireless, LLC; 7) Cricket Communications; and 8) Tag Mobile, LLC.

¹⁴ These carriers are: 1) Airvoice Wireless, LLC; 2) AmeriMex Communications Corp.; 3) Blue Jay Wireless, LLC; 4) Boomerang Wireless, LLC; 5) Global Connections Inc. of America; 6) Q Link Wireless, LLC; 7) SI Wireless, LLC; and 8) Telrite Corporation d/b/a Life Wireless.

discovery, and one or more informal conferences. Although all LECs, wireless carriers, and ETCs in Kentucky have been made parties to this proceeding, the Commission recognizes that some of the carriers may not have an interest in this proceeding. For example, carriers that pass the cost of the surcharge onto their customers and do not participate in the Lifeline program, or ETCs that do not receive KUSF support, may not want to participate in this proceeding. Therefore, the Commission will allow each carrier that is not an ETC in Kentucky receiving both federal USF and state support the opportunity to individually or jointly file, within 30 days of the date of this Order, a written request setting forth the reasons why withdrawal as a party is appropriate. The parties to this case are listed in the attached service list. Each carrier that remains a party to this case will be required to individually or jointly file initial testimony in accordance with the schedule in the Appendix.

Each party shall file testimony as directed by this Order. The initial testimony of the carriers and ETCs, and other parties that choose to file testimony, should address, but not be limited to: the need for continuing the KUSF; the possibility of reducing the amount of KUSF support; how to review distributions from the KUSF to determine the accuracy of the distributions; future funding of the KUSF; and future practices for requesting and receiving support from the KUSF, with an emphasis on ensuring the accurate reporting of lines receiving Lifeline support and requested KUSF support.

IT IS THEREFORE ORDERED that:

1. This proceeding is opened to develop a record upon which the Commission can make changes as necessary to the funding, administration, and future of the Kentucky Universal Service Fund.

2. All local exchange carriers in Kentucky, all Commercial Mobile Radio Service Providers in Kentucky, all Eligible Telecommunications Carriers in Kentucky, and the Attorney General's Office are made parties to this proceeding.

3. A person who submits a motion to intervene after February 26, 2016, and upon a showing of good cause is granted full intervention, shall accept and abide by the existing procedural schedule.

4. Unless otherwise provided by Commission Order, any party filing a paper shall comply with the electronic filing procedures set forth in 807 KAR 5:001, Section 8, and shall file with the Commission an original in paper medium and an electronic copy.

5. Responses by parties and comments by the public on the issue of temporarily raising the KUSF per-line monthly surcharge from \$.08 to \$.14, or decreasing the KUSF support to approximately \$2.00 per line, during the pendency of this proceeding shall be filed no later than February 22, 2016.

6. Any other public comments by non-parties shall be in writing and shall be filed prior to any hearing or shall be presented at the hearing.

7. The procedural schedule set forth in the Appendix, attached hereto and incorporated herein, shall be followed.

8. a. Responses to requests for information shall be appropriately bound, tabbed and indexed and shall include the name of the witness responsible for responding to the questions related to the information provided, with an original in paper medium and an electronic copy to the Commission.

b. Each response shall be answered under oath or, for representatives of a public or private corporation or a partnership or association or a

governmental agency, be accompanied by a signed certification of the preparer or person supervising the preparation of the response on behalf of the entity that the response is true and accurate to the best of that person's knowledge, information, and belief formed after a reasonable inquiry.

c. Any party shall make timely amendment to any prior response if it obtains information which indicates that the response was incorrect when made or, though correct when made, is now incorrect in any material respect.

d. For any request to which a party fails or refuses to furnish all or part of the requested information, that party shall provide a written explanation of the specific grounds for its failure to completely and precisely respond.

e. Any party filing testimony shall comply with the electronic filing procedures set forth in 807 KAR 5:001, Section 8, and shall file with the Commission an original in paper medium and an electronic copy.

f. Any party filing a paper containing personal information shall, in accordance with 807 KAR 5:001, Section 4(10), encrypt or redact the paper so that personal information cannot be read.

9. Motions for extensions of time with respect to the schedule herein shall be made in writing. Parties are advised that due to the time-sensitive nature of this proceeding, such motions will be granted only upon a showing of good cause.

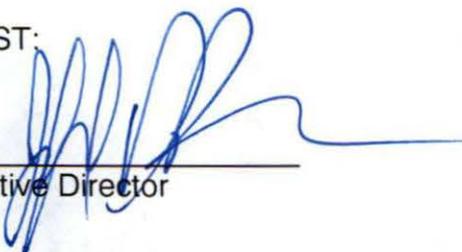
10. At any public hearing in this matter, neither opening statements nor summarization of direct testimonies shall be permitted.

11. Nothing contained herein shall prevent the Commission from entering further Orders in this matter.

By the Commission

ENTERED ²¹
FEB 01 2016
KENTUCKY PUBLIC
SERVICE COMMISSION

ATTEST:



Executive Director

APPENDIX

APPENDIX TO AN ORDER OF THE KENTUCKY PUBLIC SERVICE
COMMISSION IN CASE NO. 2016-00059 DATED **FEB 01 2016**

- Responses by parties and comments by the public on the issue of temporarily raising the KUSF per line monthly surcharge from \$.08 to \$.14, or decreasing the KUSF support to approximately \$2.00 per line, during the pendency of this proceeding shall be filed no later than 02/22/2016
- Motions for intervention and any motions from carriers to be removed from this case shall be filed no later than 02/26/2016
- Initial testimony shall be filed individually or jointly by each party no later than 03/07/2016
- Initial requests for information shall be filed no later than 04/06/2016
- Responses to initial requests for information shall be filed no later than 04/27/2016
- An informal conference, beginning at 10:00 a.m. Eastern Daylight Time shall be held at the Commission's offices to address procedural issues and other issues raised in testimony 05/11/2016
- Response testimony by any party shall be filed no later than 06/01/2016
- Supplemental requests for information shall be filed no later than 06/22/2016
- Responses to supplemental requests for information shall be filed no later than 07/13/2016
- Any request for an evidentiary hearing shall be filed no later than To be scheduled

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